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No. 08-66

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SUPREME COURT, U.S.

In The
Supreme Court of the United States

TROY ANTHONY DAVIS,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Georgia

BRIEF IN OPPOSITION ON BEHALF OF RESPONDENT

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CAPITAL CASE
QUESTIONS PRESENTED

1.

Whether the Georgia Supreme Court's fact-specific application of long-standing state law requirements governing extraordinary motions for new trial, presents no issue warranting this Court's exercise of its certiorari jurisdiction?

2.

Whether the record demonstrates that this case is not the proper vehicle for reviewing Petitioner's Eighth Amendment "innocence" claim which has been repeatedly litigated in state and federal habeas proceedings?

3.

Whether Petitioner's unfounded and newly-crafted assertion that Petitioner has a "liberty interest" in obtaining a hearing in a state court extraordinary motion for new trial proceeding was not raised in the lower courts, did not serve as the basis for the Georgia Supreme Court's decision and does not warrant the grant of certiorari in the context of the specific facts of Petitioner's case?

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DENIAL OF SPECIFIC "FACTS" SET OUT IN PETITION

Respondent denies Petitioner's factual assertion that he is "an innocent man," (Petition, p. 7), as well as Petitioner's assertion that he has presented "substantial new admissible evidence of innocence." (Petition, p. 3).

The evidence in the record does not support Petitioner's factual assertion that the Supreme Court of Georgia "barred relevant recantation evidence," (Petition, p. 24), nor does the record support Petitioner's assertion that the trial court and the Georgia Supreme Court "exacerbated the risk of an erroneous execution." (Petition, p. 24). Respondent denies Petitioner's assertion that the State's case was "made up almost entirely of this type of questionable evidence." (Petition, p. 29).

Respondent also disputes Petitioner's characterization of various newly-obtained post-trial declarations as constituting "recantations of eyewitness testimony," since the Georgia Supreme Court correctly noted with reference to several of these post-trial declarations that the statement "fails to show that Davis was not in fact the perpetrator and fails to show that the witness's testimony was the 'purest fabrication.'" *Davis v. State*, 283 Ga. 438, 442 (2008).

BRIEF IN OPPOSITION ON BEHALF OF RESPONDENT

PART ONE

STATEMENT OF THE CASE

(a) Trial Proceedings in the Superior Court of Chatham County (1989-1991)

Petitioner, Troy Anthony Davis, was indicted in Chatham County, Georgia on November 15, 1989, for the murder of Officer Mark Allen MacPhail, obstruction (against Officer Mark Allen MacPhail), two counts of aggravated assault and possession of a firearm during the commission of a felony.

During Petitioner's trial, held on August 19-30, 1991, Petitioner was represented by Robert Falligant and Robert Barker. During his opening statement, defense counsel Barker argued, "You're going to hear a story that is going to be unbelievable. You are going to see a cast of characters that you will never have seen before, and they are unbelievable, and I mean that in two senses. They are just not worthy of belief." (T. 682.)[1]

Petitioner testified in his own behalf at trial.[2] Petitioner admitted that he was at the scene of the shooting, but claimed he did not see who shot Office

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[1] T. 679-683. (References to the transcript of Petitioner's trial will be designated by T., followed by the appropriate page number.)

[2] T. 1415-1459.

MacPhail because he was running away from the shooting and never looked back to see who did the shooting. (T. 1424; 1435). Petitioner specifically testified, "I heard the shot, but I didn't exactly see the shooting." (T. 1435).

During the trial, jailhouse informant Kevin McQueen testified that Petitioner admitted to him that he shot Officer MacPhail. (T. 1232). Petitioner testified that he did not know McQueen, never made a statement to McQueen and was never in the same cell with McQueen (T. 1459), and did not play basketball with McQueen. (T. 1431-1434). Petitioner Davis specifically denied ever telling McQueen that he killed the cop. (T. 1434).

Petitioner also testified that he did not shoot Michael Cooper at the party in Cloverdale, occurring the day before Officer MacPhail's murder. In fact, Petitioner claimed that he did not know Michael Cooper and saw him for the first time in the courtroom. (T. 1435).

Defense counsel for Petitioner presented the following five witnesses during the guilt-innocence phase of Petitioner's trial: Joseph Washington (T. 1339); Shelley Sams (T. 1352); Tonya P. Johnson (T. 1357); Jeffrey Sams (T. 1372-1373); and Virginia Roberts Davis (T. 1385).

During his trial, just as during his extraordinary motion for new trial, Petitioner claimed that Sylvester "Red" Coles was the murderer of Officer MacPhail. However, Red Coles also testified during

Petitioner's trial and was extensively cross-examined by defense counsel.[3] (T. 899-974). During his trial testimony, Red Coles did not implicate Petitioner in the shooting of Officer MacPhail, but merely stated that he and Petitioner were together when the shooting occurred. (T. 938-942). Red Coles testified that he never saw Petitioner fire any shot that night and that he did not know who shot Officer MacPhail. (T. 942).

During defense counsel's guilt phase closing argument,[4] counsel attempted to discredit the eyewitness testimony identifying Petitioner as the shooter, by arguing the following:

> The first evidence and information they ever had in this case came from the mouth of the witness that the State put on the stand, and that was Sylvester Red Coles, the same individual who admitted having a gun, the same individual that numerous witnesses identified as having a gun that night, the same individual who admitted that he ran, he changed shirts, tried to conceal his identity, the same individual who admitted he ran to a lawyer and turned himself in at four o'clock, but not to surrender for a crime, but to give the police the name of the person that they should be looking for.

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[3] The cross-examination of Red Coles appears on pages 919-951 of the guilt phase transcript.

[4] Defense counsel's closing argument appears on pages 1506-1550 of the trial transcript.

And he gave them the name of Troy Anthony Davis, and from that point on, the entire focus of this investigation was not in deciding and finding the truth of this case as to who actually committed these crimes that the Defendant is now on trial for, but it was to find evidence to convict the Defendant of these crimes.

You see, at that point, the police knew, after talking to Sylvester Coles, that he, D.D. Collins, and the Defendant were on the lot that night. And yet what did the police do? They bought Mr. Coles' story hook, line, and sinker. They never considered Mr. Coles to be a suspect. They never considered Mr. Collins to be a suspect. What they considered them to be was witnesses.

They never questioned for one minutes (sic) the truth of what Sylvester Coles had to tell them. And then began this investigation. And they went out into this community, and they rounded up witnesses everywhere they could find them, and they paraded them in here, and Mr. Lawton talks about the overwhelming evidence in this case. We were overwhelmed by the number of witnesses in this case. **But what about the quality, the credibility of those witnesses?**

You, the jurors in this case are the sole judges of the credibility of those witnesses. . . . Seven witnesses put on that stand by the State of Georgia recanted, contradicted, or changed their testimony. . . .

> Many of those witnesses who came into this courtroom and changed their testimony and said, the first thing out of their mouth was, I'm not going to lie now.

(T. 1507-1509) (emphasis supplied).

Defense counsel also argued that there were "striking similarities in facial features" between Petitioner and Red Coles. (T. 1511). Later, defense counsel specifically argued that Red Coles, not Petitioner, had the motive, means and opportunity to commit the murder. (T. 1518-1519).

As to the jailhouse informant, Kevin McQueen, defense counsel argued, "Look at his record and see if you can attach any credibility to the story that he told" and "let's look at the story he told." (T. 1535-1536). Defense counsel again challenged McQueen's credibility by arguing, "I don't know why they even put a man like Kevin McQueen on the stand. The outrageous story that he concocted doesn't even begin to mesh, or it's not even similar to the incidents that occurred that night." (T. 1537).

Finally, defense counsel argued, "This case is replete with reasonable doubt, and I submit to you that in your quest for the truth, what this case is all about, as you sift through this evidence and you review your notes about the consistencies, the prior inconsistent statements, the outright lies, the fabrications of the State's witnesses, if you reach the conclusion that the State has not carried its burden beyond a reasonable doubt, then as the Court will charge

you, you'll be bound to acquit the Defendant." (T. 1549-1550).

On August 28, 1991, Petitioner was found guilty of one count of malice murder, one count of obstruction of a law enforcement officer, two counts of aggravated assault and one count of possession of firearm during the commission of a felony.

Petitioner Davis also testified during the sentencing phase of his trial (Sentencing phase transcript, pp. 52-67), asking the jury to spare his life, by continuing to assert his "innocence" by telling the jury that "at the present time you've found me guilty of some offenses that I did not even commit." (T. 65).

Defense counsel continued to argue lingering doubt as to Petitioner's guilt during his sentencing phase closing argument. (Sentencing phase transcript, p. 80). Following the penalty phase, Petitioner was sentenced to death for the murder of Officer MacPhail on August 30, 1991.

(b) Motion for New Trial Proceedings in the Trial Court (1991-1992)

On September 12, 1991, the trial court appointed Petitioner's trial attorneys to represent Petitioner on appeal and appointed another attorney, Mr. C. Jackson Burch, to represent Petitioner specifically as to raising any claims of ineffective assistance of counsel.

On October 1, 1991, Petitioner's original trial attorneys, Falligant and Barker, filed a motion for

new trial on Petitioner's behalf, raising three grounds.[5] On February 14, 1992, Mr. Falligant and Mr. Barker filed an amended motion for new trial, raising 26 grounds, all alleging trial court error.[6] The hearing on this motion was held on February 18, 1992.

Immediately following this hearing, Mr. Burch filed an "Amendment to Motion for New Trial as to Ineffective Assistance of Trial Counsel," raising 16 different grounds of ineffective assistance of trial counsel.[7] On February 28, 1992, the trial attorneys added an additional ground to their amended motion for new trial. On March 16, 1992, the trial court denied all portions of the motion for new trial, as amended.

(c) Consolidated Direct Appeal to the Georgia Supreme Court (1992-1993)

On appeal, the Georgia Supreme Court consolidated Petitioner's two appeals before the Court. *See*

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[5] In his original motion for new trial, Petitioner alleged the following:

> (1) verdict is contrary to the evidence without evidence to support it;
>
> (2) verdict is decidedly and strongly against the weight of the evidence; and
>
> (3) verdict is contrary to law under the principals of justice and equity. (Record on Direct Appeal, 2729).

[6] Record on Direct Appeal, 2745-2749.

[7] Record on Direct Appeal, 2752-2782.

Davis v. State, 263 Ga. 5 (1993). Petitioner's convictions and death sentence were unanimously affirmed by the Georgia Supreme Court in the consolidated appeal in *Davis v. State*, 263 Ga. 5 (1993).

In its decision, the Georgia Supreme Court summarized the facts presented at Petitioner's trial as follows:

> At midnight, on August 18, 1989, the victim, a police officer, reported for work as a security guard at the Greyhound Bus Station in Savannah, adjacent to a fast food restaurant. As the restaurant was closing, a fight broke out in which Davis struck a man with a pistol. The victim, wearing his police uniform – including badge, shoulder patches, gun belt, .38 revolver, and night stick – ran to the scene of the disturbance. Davis fled. When the victim ordered him to halt, Davis turned around and shot the victim. The victim fell to the ground. Davis, smiling, walked up to the stricken officer and shot him several more times. The officer's gun was still in his holster.
>
> The victim wore a bullet-proof vest, but the vest did not cover his sides and the fatal bullet entered the left side of his chest and penetrated his left lung and aorta, and came to rest at the back of his chest cavity. The officer was also shot in the left cheek and the right leg.
>
> The next afternoon, Davis told a friend that he had been involved in an argument at the

> restaurant the previous evening and struck someone with a gun. He told the friend that when a police officer ran up, Davis shot him and that he went to the officer and "finished the job" because he knew the officer got a good look at his face when he shot him the first time.
>
> After his arrest, Davis told a cellmate a similar story.

Davis v. State, 263 Ga. 5, 6 (1993).

The Georgia Supreme Court also specifically found that the evidence presented at trial was sufficient to support the verdict under the *Jackson v. Virginia* standard, by holding that, "The evidence supports the conviction on all counts. *Jackson v. Virginia*, 443 U.S. 307 (99 S. Ct. 2781, 61 L. Ed. 2d 560) (1979)." *Davis v. State*, 263 Ga. 5, 7 (1993).

Petitioner's petition for a writ of certiorari was denied by this Court in *Davis v. Georgia*, 510 U.S. 950 (1993).

(d) State Habeas Corpus Proceedings (1994-1997)

On March 15, 1994, the Georgia Appellate Practice and Educational Resource Center, Inc. filed a habeas corpus petition on behalf of Petitioner. On August 28, 1995, counsel for Petitioner filed a notice of withdrawal of named counsel and motion to continue, which motions were denied on October 19, 1995. Petitioner filed a petition for immediate review

of the order denying continuance in the Georgia Supreme Court. After granting the petition for immediate review, the Court concluded that the habeas corpus court abused its discretion in denying Petitioner a continuance. *Davis v. Thomas*, 266 Ga. 835 (1996).

Petitioner filed a 79-page amendment to his state habeas corpus petition, raising 15 claims for relief, on November 6, 1996. During the state habeas corpus evidentiary hearing held on December 16, 1996, all four of Petitioner's trial attorneys testified and Petitioner presented 33 affidavits. Petitioner did not present any live testimony from the affiants whose affidavits were offered at the state habeas hearing and whose affidavits were also presented during the extraordinary motion for new trial.

During the state habeas corpus hearing, Petitioner's lead trial attorney, Robert Falligant, testified that the real issue at trial was:

> whether or not he [Davis], in fact, was the person who committed the crimes. And, quite frankly, based on the information that we had and the evidence I had, it appeared it was a very good likelihood that Sylvester Coles, also known as Red, was the one who actually killed Officer MacPhail and shot, well not so much shot Michael Cooper, but the main issue in my case was the death of Office MacPhail, and basically that is the emphasis we put on the investigation and what we were looking for.

(State habeas corpus transcript, volume 1, pp. 125-126).

The state habeas corpus court denied Petitioner relief on September 9, 1997. In denying Petitioner relief, the state habeas corpus court found the following:

> from a review of the record that many pieces of evidence supporting a finding that Coles was the shooter or highlighting inconsistencies in the testimony of witnesses who identified Davis as the shooter were indeed presented to the jury during Davis' trial. (cite omitted) The jury, in its rightful role as finder of fact during the trial, was responsible for evaluating the credibility of the witnesses and determining whether the state proved beyond a reasonable doubt that Davis shot and killed Officer MacPhail. **This court, although acting now as the finder of fact in this habeas proceeding, cannot supplant the role of the jury and find based on its own review of the record that the jury *should* have concluded that the state did not carry its burden at Davis' trial.** The core purpose of the writ of habeas corpus would not be served by such a presumptuous usurpation of the jury's deliberative process. This court is limited to evaluating whether Davis' rights were properly protected in the context of his jury trial.

(State Habeas Corpus Order of 9/5/97, p. 41) (emphasis supplied).

The state habeas corpus court denied relief by finding that all of Petitioner's claims had been procedurally barred except for his ineffectiveness claim as to the motion for new trial and appellate stages. (State habeas corpus court order denying relief, p. 43).

(e) Appeal to the Georgia Supreme Court from the Denial of State Habeas Corpus Relief (1997-2000)

Petitioner appealed to the Supreme Court of Georgia from the denial of state habeas corpus relief. In Claim VII of his application for a certificate of probable cause to appeal, Petitioner alleged, *inter alia*, that the trial evidence showed that Red Coles was the shooter. (Application, pp. 88-101).

On February 24, 2000, the Georgia Supreme Court granted Petitioner's application for certificate of probable cause to appeal from the denial of state habeas corpus relief and asked the parties to address four specific questions: (1) whether execution by electrocution constituted cruel and unusual punishment under our Federal and State Constitutions; (2) whether imposition of the death penalty in this case was disproportionate to the penalty imposed in other similar cases in Georgia; (3) whether Petitioner's appellate counsel operated under a conflict of interest; and (4) whether Petitioner's absence during critical stages of his trial violated his rights under our Federal and State Constitutions.

The Georgia Supreme Court affirmed the denial of state habeas corpus relief on November 13, 2000, in *Davis v. Turpin*, 273 Ga. 244 (2000), and denied Petitioner's motion for reconsideration on December 15, 2000.

On May 14, 2001, Petitioner filed a petition for a writ of certiorari in this Court which was denied on October 1, 2001 in *Davis v. Turpin*, 534 U.S. 842 (2001).

(f) Federal Habeas Corpus Proceedings (2001-2004)

Petitioner filed his application for federal habeas corpus relief in the United States District Court for the Southern District of Georgia, Savannah Division, on December 14, 2001.

Petitioner's motion for an evidentiary hearing which requested, in part, that Petitioner be allowed to present evidence of alleged recantations of trial witnesses,[8] was denied on March 10, 2003. In denying Petitioner's motion for an evidentiary hearing, the federal habeas corpus court extensively reviewed each affidavit proffered during the state habeas corpus proceedings and where applicable, compared the affiant's testimony to any testimony which was

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[8] *See* Respondent's Appendix 1 to this brief which is Respondent's Chart Listing Exhibits Offered By Petitioner During the Extraordinary Motion for New Trial.

given during Petitioner's trial, as well as determining whether the affiant had previously provided an affidavit. (Federal Habeas Court Order of 3/10/03, denying evidentiary hearing, pp. 5-22).[9]

In reviewing Petitioner's evidentiary hearing request, the federal habeas court scrutinized these affidavits, both to determine if they could have been submitted during state habeas corpus proceedings (Federal Habeas Court Order of 3/10/03, denying evidentiary hearing, p. 40) and also, to determine if the presentation of these affidavits would undermine the court's confidence in the outcome of the proceeding.[10] (Federal Habeas Court Order of 3/10/03, denying evidentiary hearing, pp. 40-41).

The federal habeas court expressly stated that it would consider all of the affidavits and material admitted during state habeas corpus proceedings, but would not permit Petitioner to re-offer these affidavits during a federal evidentiary hearing. (Federal

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[9] As the federal habeas court noted, with the exception of attorney testimony, all of the "actual innocence" testimony offered by Petitioner during state habeas corpus proceedings, was in affidavit form. (Federal Habeas Court Order of 3/10/03, denying evidentiary hearing, p. 39).

[10] In fact, the federal habeas corpus specifically examined each affidavit offered by Petitioner. (Federal Habeas Court Order of 3/10/03, denying evidentiary hearing, pp. 5-22).

Habeas Court Order of 3/10/03, denying evidentiary hearing, p. 41).[11]

The federal habeas court reviewed the trial testimony, including Petitioner's testimony, the evidence presented during state habeas corpus proceedings and found that even after Petitioner had been given a full opportunity to present any evidence in support of his "actual innocence" claim he had failed to establish that he was "factually innocent." (Federal Habeas Court Order of 3/10/03, denying evidentiary hearing, pp. 5-22; 37-41.)

The record is clear that the federal habeas court examined the post-trial affidavits relied upon by Petitioner and the federal habeas court held that, "the Court finds that because the submitted affidavits are insufficient to raise doubts as to the constitutionality of the result at trial, there is no danger of a miscarriage of justice in declining to consider the claim." (Federal Habeas Court Order of 5/13/04, denying relief, p. 25).

The federal habeas corpus court denied Petitioner habeas corpus relief on May 13, 2004, and denied Petitioner's motion to amend the judgment on June 3, 2004.

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[11] This is the same decision reached by the trial court in considering these affidavits when proffered as "support" for Petitioner's extraordinary motion for new trial. (*See*, 7/13/07 Order Denying Extraordinary Motion for New Trial, pp. 6-7; Petitioner's Appendix pp. 26a-27a.)

(g) Appeal to the Eleventh Circuit Court of Appeals (2004-2006)

Although the district court denied Petitioner's application for a certificate of appealability, the Eleventh Circuit granted Petitioner's application on September 15, 2004.

The Eleventh Circuit began its examination of Petitioner's appeal from the denial of federal habeas corpus relief by noting that, "in this case, Davis does not make a substantive claim of actual innocence." *Davis v. Terry*, 465 F.3d 1249, 1251 (11th Cir. 2006). The Eleventh Circuit proceeded to find that Petitioner "concedes" that all of his claims for relief are procedurally defaulted and that the federal habeas court actually considered the "merits" of Petitioner's constitutional claims, but nevertheless, "rejected them as a matter of law." *Davis v. Terry*, 465 F.3d 1249, 1252 (11th Cir. 2006).

The Eleventh Circuit ultimately concluded that, "we cannot say that the district court erred in concluding that Davis has not borne his burden to establish a viable claim that his trial was constitutionally unfair." *Davis v. Terry*, 465 F.3d 1249, 1256 (11th Cir. 2006).

(h) Petition for Certiorari from Eleventh Circuit Decision Affirming Denial of Federal Habeas Relief (2007)

Petitioner's petition for a writ of certiorari was filed on April 11, 2007. The question presented in that petition reads as follows:

No court has examined Petitioner Troy Davis' compelling new evidence to determine if he is innocent. The Court of Appeals for the Eleventh Circuit affirmed the district court's refusal to examine Petitioner's evidence of innocence. If believed, the post-trial affidavits of numerous witnesses show that constitutional violations led to the conviction of an innocent man. In violation of this Court's precedent, no court has assessed the credibility of Mr. Davis' new evidence that underlies both his innocence and constitutional claims.

The question presented is:

Can a habeas court avoid its role as a fact finder in substantial innocence cases by skipping the innocence 'gateway' inquiry and ruling on a petitioner's constitutional claims when the innocence and constitutional issues arise out of the same facts?

This petition for certiorari was denied on June 25, 2007 in *Davis v. Terry*, 127 S.Ct. 3010 (2007).

(i) Extraordinary Motion for New Trial Proceedings in the Trial Court and Appeal to the Georgia Supreme Court (July 2007)

On July 9, 2007, eight days before his scheduled execution timeframe, Petitioner filed an Extraordinary Motion for New Trial in the Superior Court of Chatham County, Georgia. In his extraordinary motion, Petitioner alleged that "this is a case of mistaken identity"

and that "Red Coles – not Davis – murdered Officer MacPhail." (Extraordinary motion for new trial, pp. 1-2.)

Relying solely on state law (Petitioner's 21a-27a), the trial court denied Petitioner's extraordinary motion without a hearing on July 13, 2007. However, although no evidentiary hearing was conducted, the trial court having recognized "the attendant gravity" of the motion, "thoroughly and carefully" reviewed each of the affidavits offered by Petitioner as alleged support for his motion. (Petitioner's Appendix 21a-22a). In denying this extraordinary motion, the trial court aptly observed that "the majority of affidavits submitted by Defendant were sworn over five years ago and a few affidavits were sworn over ten years ago." (Petitioner's Appendix 23a, footnote 2.)

On July 17, 2007, Petitioner filed a Notice of Appeal from the denial of this extraordinary motion for new trial and an application for discretionary appeal on July 16, 2007 and a motion for stay of execution in the Georgia Supreme Court. In this application, Petitioner did not raise any liberty interest, but merely stated that "the application will specifically address why the lower court's denial of the extraordinary motion for new trial was erroneous." (Application, p. 3). While that application was pending, the Georgia Board of Pardons and Paroles granted a temporary stay of execution and scheduled a clemency hearing.

On August 3, 2007, the Georgia Supreme Court dismissed Petitioner's motion for a stay of execution

as moot and granted Petitioner's application for a discretionary appeal. *Davis v. State*, 282 Ga. 368 (2007). The State Board of Pardons and Paroles rescinded its stay of execution and suspended its clemency consideration, pending the Georgia Supreme Court's consideration of Petitioner's discretionary appeal.

On March 17, 2008, the Georgia Supreme Court concluded that the trial court did not abuse its discretion in denying Petitioner's extraordinary motion for new trial without a hearing. *Davis v. State*, 283 Ga. 438 (2008). The Georgia Supreme Court reviewed the evidence presented at trial and found that, "at trial, Davis's defense centered on the theory that Coles was the murderer. Both Davis and Coles testified, each claiming their innocence. **The evidence at trial authorized the jury to conclude beyond a reasonable doubt that Davis was the man who struck Larry Young and shot Officer MacPhail.**" *Davis v. State*, 283 Ga. 438, 440 (2008) (emphasis supplied).

The Georgia Supreme Court extensively reviewed each category of "affidavit testimony" on which Petitioner's extraordinary motion relied, including "recantations by trial witnesses"; "statements recounting alleged admissions of guilty by Coles"; "statements that Coles disposed of a handgun following the murder" and "alleged eyewitness accounts." *Davis v. State*, 283 Ga. 438, 441-447 (2008).

In reviewing Petitioner's extraordinary motion, in light of the trial evidence, the evidence presented at the extraordinary motion for new trial and controlling state legal principles, the Georgia Supreme Court expressly noted, "particularly in this death penalty case where a man might soon be executed, we have endeavored to look beyond bare legal principles that might otherwise be controlling to the core question of whether a jury presented with Davis's allegedly-new testimony would probably find him not guilty or give him a sentence other than death." *Davis v. State*, 283 Ga. 438, 447 (2008).

The Georgia Supreme Court held that, "Upon our careful review of Davis's extraordinary motion for new trial and the trial record, we find that Davis failed to present such facts in his motion and, therefore, that the trial court did not abuse its discretion in denying that motion without a hearing." *Davis v. State*, 283 Ga. 438, 448 (2008).

The Georgia Supreme Court held as follows, in rejecting the alleged basis for Petitioner's petition for certiorari: "Davis argued in the trial court that to apply Georgia's procedures for extraordinary motions for new trial in a manner that allows for his execution would be unconstitutional. *See Herrera v. Collins*, 506 U. S. 390 (113 S. Ct. 853, 122 LE2d 203) (1993). We hold that Georgia law, as described and applied above, is not unconstitutional." *Davis v. State*, 283 Ga. 438, 448 (2008).

Petitioner filed a motion for reconsideration which was denied on April 14, 2008. The Georgia Supreme Court also withdrew its prior opinion issues on March 17, 2008 and issued a substitute opinion, as well as allowing additional time for Petitioner to file a motion for reconsideration of the substitute opinion.

The instant petition for a writ of certiorari was filed on July 14, 2008, from the order of the Georgia Supreme Court affirming the dismissal, without a hearing, of Petitioner's extraordinary motion for new trial, filed shortly before his execution window was scheduled to begin.

PART TWO

STATEMENT OF THE FACTS

At approximately 1:00 a.m. on Saturday, August 19, 1989, Savannah Police Officer David Owens responded to a call of "an officer down" at the Greyhound bus station on Oglethorpe Avenue. (T. 759).[12] Officer Owens found the victim, Mark MacPhail, a 27-year-old Savannah police officer, lying face down in the parking lot of the Burger King restaurant next to the bus station. (T. 759). Officer MacPhail's mouth

[12] The names of those witnesses who testified both at the trial and by way of affidavit at the extraordinary motion for new trial, appear in bold type and their affidavit in Petitioner's appendix to his extraordinary motion for new trial, is referenced in a footnote.

was filled with blood and bits of his teeth were on the sidewalk. As he began administering CPR to the victim, Officer Owens noticed that the victim's firearm was still snapped into his holster. (T. 761).

Larry Young, who was present at the scene, told police that between midnight and 1:00 a.m. he had walked from the Burger King parking lot, which was frequented by transients and homeless individuals, to the convenience store down the block to purchase beer. (T. 797-798). **Sylvester "Red" Coles** saw Young leave the pool hall next door and began following Young demanding a beer. (T. 798). Coles continued to harass Mr. Young all the way back to the Burger King. (T. 799). When Young arrived at the parking lot, **Harriet Murray**[13] and two unidentified men were sitting on a low wall by the restaurant. Petitioner, Troy Anthony Davis, and Daryl Collins, who had taken a shortcut to the parking lot, came out from behind the bank and surrounded Mr. Young. (T. 799). Mr. Coles, who was facing Mr. Young, told him not to walk away "cause you don't know me, I'll shoot you," and began digging in his pants. (T. 845). The two men seated on the wall fled, and Ms. Murray ran to the back door of the Burger King, which was locked. (T. 799). Petitioner, who was behind Young and to his right, blindsided him, striking him on the side of the

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[13] As noted by the Georgia Supreme Court, Ms. Murray's affidavit was not notarized and therefore, the Court disregarded her unsworn statement. *See Davis v. State*, 283 Ga. 438, 443 (2008).

face with a snub-nosed pistol, inflicting a severe head injury which formed the basis of Count III of the indictment. Mr. Young began to bleed profusely, and he stumbled to a van parked in front of the Burger King drive-in window, asking the occupants for help. (T. 803). When the driver did not respond, Petitioner went to the drive-in window, but the manager shut it in his face. (T. 803, 915).

In response to the parking lot disturbance, Officer MacPhail, who was working as a security guard at the restaurant, walked rapidly from behind the bus station, with his nightstick in his hand and ordered the three men to halt. (T. 849). Mr. Collins and Petitioner fled, and Officer MacPhail ran past Sylvester Coles in pursuit of Petitioner. (T. 851). Petitioner looked over his shoulder, and when the officer was five to six feet away, he shot him. Officer MacPhail fell to the ground, and Petitioner walked towards him and shot him again while he was on the ground. (T. 850). One eyewitness testified that Petitioner was smiling at the time. (T. 851). The victim died of gunshot wounds before help arrived.

Thirty minutes after the killing, Red Coles appeared at his sister's house a few blocks from the bus station and asked his sister for another shirt. (T. 915). Shortly thereafter, Petitioner appeared and asked Mr. Coles for the yellow t-shirt Coles had been wearing. After he changed his shirt, Petitioner left. (T. 915). Petitioner fled to Atlanta the following day and surrendered to authorities on August 23, 1989.

Police learned that on the night prior to the killing, Petitioner had attended a party on Cloverdale Drive in a subdivision near Savannah. (T. 1115-1116). During the party, Petitioner, annoyed that some girls ignored him, told several of his friends something about "burning them." (T. 1264). Petitioner then walked around saying, "I feel like doing something, anything." (T. 1264). When **Michael Cooper**[14] and his friends were leaving the party, Petitioner was standing out front. (T. 1120). Michael Cooper was in the front passenger seat, and as the car pulled away, several of the men in the car leaned out the window, shouting and throwing things. (T. 1120, 1186). Petitioner shot at the car from a couple of hundred feet away and the bullet shattered the back windshield and lodged in Michael Cooper's right jaw. (T. 1186). Cooper was treated at the hospital and released and Cooper's injury formed the basis for Count IV of Petitioner's indictment. The shooting incident took place approximately one hour before Officer MacPhail was shot.

Shortly after Michael Cooper was shot, Eric Ellison and **D.D. Collins** picked up Petitioner in Cloverdale and took him to Brown's pool hall in Savannah. Red Coles, wearing a yellow t-shirt, was already at the pool hall.

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[14] Petitioner's Appendix 26 to his extraordinary motion for new trial.

An autopsy revealed that Officer MacPhail was shot twice. One bullet entered the corner of his cheekbone on the left side and exited the back of his neck; the bullet blew away bits of his teeth, and his lip was impaled on his teeth. (T. 782-784). The second bullet passed through the armhole of MacPhail's bullet-proof vest, and entered his chest on the left side. (T. 784). This bullet pierced the lung and the aorta, and lodged in the opposite side between the third and fourth vertebrae, at the back of the chest cavity near the spinal column. (T. 784-787). The cause of the victim's death was a loss of blood from a gunshot wound to the left side of his chest. (T. 789). The pathologist further noted that there were scrapes and lacerations on the victim's arms and legs, and an apparent injury to his right thigh, which could have been grazed by a bullet. (T. 788-789).

A ballistics expert testified that the bullet that wounded Michael Cooper could have been fired from a .38 special revolver or a .357 magnum. (T. 1291). The bullet from MacPhail's body was of the same type and was possibly fired from the same weapon as used in the Cooper shooting. (T. 1292). Four .38 caliber special casings recovered at Cloverdale where Michael Cooper was wounded, were fired from the same gun as casings found at the scene of Officer MacPhail's murder. (T. 1292).

At trial, **Kevin McQueen**,[15] who was incarcerated at the Chatham City jail with Petitioner, testified that Petitioner told him there had been a party in Cloverdale on the night prior to the victim's murder; Petitioner had argued with some boys and there was an exchange of gunfire. (T. 1230-1231). Petitioner told McQueen he did some of the shooting. (T. 1231). After the party, Petitioner went to a girlfriend's house and intended to eat breakfast at Burger King. Petitioner stated that he was with a friend and they ran into a guy who "owed money to buy dope." (T. 1231). There was a fight, Officer MacPhail appeared, and Petitioner shot him in the face. As Officer MacPhail attempted to get up, Petitioner shot him again, because he was afraid MacPhail had seen him that night at Cloverdale. (T. 1232). Petitioner also told McQueen that he was on his way out of town to Atlanta. (T. 1232).

Jeffrey Sapp[16] testified that Petitioner told him he did the shooting at Burger King, but that it was self-defense. (T. 1249-1252). Mr. Sapp noted that Petitioner's street name was "RAH," standing for "Rough As Hell." (T. 1257).

Numerous eyewitnesses identified Petitioner as the perpetrator of the murder, including **Harriet**

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[15] Petitioner's Appendix 13 to his extraordinary motion for new trial.

[16] Petitioner's Appendix 14 to his extraordinary motion for new trial.

Murray,[17] **Dorothy Ferrell,**[18] **Daryl a/k/a D.D. Collins,**[19] **Antoine Williams,**[20] **Steven Sanders**[21] and **Larry Young**.[22]

Petitioner testified at trial and admitted that he was present at the scene of the shooting on the night in question, but denied that he was involved in the shooting of Cooper or the victim or the assault on Larry Young.

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[17] Petitioner's Appendix 3 to his extraordinary motion for new trial.

[18] Petitioner's Appendix 18 to his extraordinary motion for new trial.

[19] Petitioner's Appendix 16 to his extraordinary motion for new trial.

[20] Petitioner's Appendix 20 to his extraordinary motion for new trial.

[21] Petitioner's Appendix 21 to his extraordinary motion for new trial.

[22] Petitioner's Appendix 17 to his extraordinary motion for new trial.

PART THREE

REASONS FOR NOT GRANTING THE WRIT

I. THE GEORGIA SUPREME COURT'S FACT-SPECIFIC APPLICATION OF LONG-STANDING STATE LAW REQUIREMENTS GOVERNING EXTRAORDINARY MOTIONS FOR NEW TRIAL PRESENTS NO ISSUE WARRANTING THIS COURT'S EXERCISE OF ITS CERTIORARI JURISDICTION.

Petitioner seeks this Court's certiorari review of the Georgia Supreme Court's decision applying well-established state court precedent in affirming the denial of Petitioner's extraordinary motion for new trial.[23] The clear existence of a state law basis for the holding of the Georgia Supreme Court in Petitioner's appeal from the denial of his extraordinary motion for new trial, establishes that this decision rests on an adequate and independent state law ground, authorizing the denial of this petition for a writ of certiorari under this Court's longstanding precedent. *See Herb v. Pitcairn*, 324 U.S. 117, 125 (1945) ("This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds.").

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[23] "In light of the following discussion, we conclude that the trial court did not abuse its discretion in denying Davis's extraordinary motion for new trial without first conducting a hearing, and, accordingly, we affirm." *Davis v. State*, 283 Ga. 438, 439 (2008).

Petitioner's effort to obtain certiorari review by attempting to obfuscate the true nature of the Georgia Supreme Court's decision is necessitated by the fact that it is clear on the face of the Georgia Supreme Court's opinion that this opinion was solely rooted in that Court's interpretation and application of state case law governing extraordinary motions for new trial.[24] The unmistakable state court basis for the Georgia Supreme Court's opinion is demonstrated by the initial discussion of the legal standard to be utilized by that Court in reviewing Petitioner's appeal from the denial of his extraordinary motion for new trial. The Georgia Supreme Court stated the following:

> Because the statutes authorizing extraordinary motions for new trials are silent as to procedural details, "the procedural requirements for such motions are the product of case law." *Dick v. State*, 248 Ga. 898, 899 (2) (287 SE2d 11) (1982). We have held that a new trial may be granted based on newly-discovered evidence only where the defendant shows each of the following:

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[24] The fact that Petitioner's appeal from the denial of his extraordinary motion for new trial was raised and decided under state law is further demonstrated by Petitioner's citation in his petition to various decisions of Georgia Supreme Court as alleged authority for the need for conducting an evidentiary hearing on extraordinary motions. *See*, Petition for Certiorari, n.18.

> (1) that the evidence has come to his knowledge since the trial; (2) that it was not owing to the want of due diligence that he did not acquire it sooner; (3) that it is so material that it would probably produce a different verdict; (4) that it is not cumulative only; (5) that the affidavit of the witness himself should be procured or its absence accounted for; and (6) that a new trial will not be granted if the only effect of the evidence will be to impeach the credit of a witness.

Timberlake v. State, 246 Ga. 488, 491 (1) (271 SE2d 792) (1980). (Citations and punctuation omitted.) "Failure to show *one* requirement is sufficient to deny a motion for a new trial." (Emphasis supplied.) Id. Extraordinary motions for new trial are "not favored," and "a stricter rule is applied to an extraordinary motion for a new trial based on the ground of newly available evidence than to an ordinary motion on that ground." (Citation and punctuation omitted.) *Crowe v. State*, 265 Ga. 582, 590-591 (15) (458 SE2d 799) (1995). A trial court's ruling on such a motion "will not be reversed unless it affirmatively appears that the court abused its discretion. [Cit.]" (Citation and punctuation omitted.) *Young v. State*, 269 Ga. 490, 491-492 (2) (500 SE2d 583) (1998). **For the reasons set forth below, we conclude that the trial court did not abuse its discretion in denying Davis's extraordinary**

> **motion for new trial without first conducting a hearing, particularly in light of the requirement under *Timberlake* that newly-discovered evidence be so material that it probably would result in a different verdict, *Timberlake*, 246 Ga. at 491 (1), and in light of the duty of a defendant to present in the affidavits supporting his or her extraordinary motion for new trial "*facts* sufficient to authorize that the motion be granted." (Emphasis in original.) *Dick*, 248 Ga. at 899 (2).**

Davis v. State, 283 Ga. 438, 440 (2008) (emphasis added).[25]

Therefore, the clearly identifiable basis for the Georgia Supreme Court opinion was its interpretation and application of Georgia caselaw governing extraordinary motions for new trial. The state caselaw basis

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[25] The record is also clear that the trial court's review of Petitioner's extraordinary motion for new trial and its ultimate denial of that motion without a hearing, was based solely on state law and the trial court did not review any "federal question" now being posed by Petitioner. The trial court began its analysis of Petitioner's extraordinary motion by stating, "Although O.C.G.A. § 5-5-41(b) authorizes Defendant to make such a Motion, the Court recognizes that in general, the Georgia Courts do not favor extraordinary motions for new trial. *Dick v. State*, 248 Ga. 898, 899 (1982) . . . Defendant bears a heavy burden in bringing such a motion." (Petitioner's Appendix, p. 22a). "Moreover, an extraordinary motion for new trial that fails to show 'any merit' may be denied a requested hearing. *Dick*, 248 Ga. At 899." (Petitioner's Appendix, p. 23a).

for the Georgia Supreme Court's decision and the fact that the decision is case-specific is made even more plain by the language of footnote two of the Georgia Supreme Court's opinion, in which the Court stated the following:

> We must point out that, contrary to the dissent's implication otherwise, this opinion does not hold and nowhere states that recantations and confessions must be categorically excluded and never considered in cases such as this. Nor do we hold that a trial court has no right to hold a hearing to consider the evidence with which it has been presented. We simply hold that, in dealing with the evidence and in its decision not to hold a hearing, the trial court did not abuse the discretion with which it is empowered by law under the facts of this case.

Davis v. State, 283 Ga. 438, 439 (2008).

Therefore, contrary to Petitioner's assertions, the Georgia Supreme Court did not establish any categorical rules about the consideration of alleged recantations during extraordinary motion for new trial proceedings, nor about whether a hearing would never be necessary to consider such an extraordinary motion. A review of the decision shows that the Georgia Supreme Court merely determined, applying state law, that no evidentiary hearing was required to consider Petitioner's proffered affidavits, as well as determining that the proffered affidavits did not

present facts which would warrant the granting of the extraordinary motion.

Petitioner has not substantiated his assertion that his "due process" claim was raised in the courts below,[26] but even assuming arguendo that any alleged federal claim was presented to the state courts, it is apparent that the resolution of any alleged federal question was not the basis for the state court decision.

The granting of certiorari in this case is clearly unwarranted, as the record demonstrates that Petitioner is merely seeking to have this Court "correct a state court judgment." As this Court explained in *Herb v. Pitcairn*, "Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our

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[26] In Petitioner's application for appeal filed in the Georgia Supreme Court, Petitioner merely alleged that, "the lower court never evaluated the merits of this evidence, but instead erroneously relied upon a general prohibition that '[a] post-trial declaration by a State witness that his former testimony is false is not cause for a new trial.'" (Application, p. 4, citing trial court order at page 3). Even though the application made passing reference to the Sixth, Eighth and Fourteenth Amendments (Application, p. 7), Petitioner alleged on appeal that he had "met all requirements for an extraordinary motion for new trial." (Application, p. 30).

review could amount to nothing more than an advisory opinion." *Herb v. Pitcairn*, 324 U.S. 117, 125-126 (1945). To review this decision of the Georgia Supreme Court based on state law grounds, would result in the issuance of a mere advisory opinion by this Court and therefore, certiorari should be denied.

The Georgia Supreme Court's interpretation and application of state court decisions governing extraordinary motions for new trial, in the context of the particular facts of Petitioner's case[27] and the lengthy procedural history of Petitioner's post-conviction challenges, constitutes an adequate and independent state ground which warrants the denial of this petition for a writ of certiorari. *See Herb v. Pitcairn*, 324 U.S. 117 (1945).

II. PETITIONER'S CASE IS AN INAPPROPRIATE VEHICLE FOR DETERMINING AN EIGHTH AMENDMENT "INNOCENCE" CLAIM WHICH HAS BEEN REPEATEDLY LITIGATED DURING PETITIONER'S STATE AND FEDERAL HABEAS CORPUS PROCEEDINGS.

Petitioner has failed to substantiate his assertion that his case "presents an ideal vehicle" to litigate his

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[27] This Court has repeatedly emphasized that it does not grant certiorari to "review specific facts." *See United States v. Johnson*, 268 U.S. 220, 227 (1925) and *Texas v. Mead*, 465 U.S. 1041 (1984).

Eighth Amendment "innocence" claim.[28] Petitioner has previously litigated his Eighth Amendment "innocence" claim using numerous legal "vehicles."

The procedural history of Petitioner's case authorizes the denial of certiorari, as it belies Petitioner's assertion that "no court has ever examined Petitioner's new evidence to determine if he is innocent." Respondent's Appendix 1 (Respondent's Chart Listing Exhibits Offered By Petitioner During Extraordinary Motion for New Trial), visibly demonstrates that the majority of Petitioner's affidavits have previously been presented and reviewed in state and federal habeas proceedings. It is clear from examining the procedural history, that Petitioner's current challenge to the eyewitness testimony given during his trial is merely the latest of Petitioner's repeated challenges to this trial testimony. Petitioner has availed himself of numerous opportunities to challenge the eyewitness testimony identifying him

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[28] Petitioner mentions cases in which post-conviction DNA evidence is offered to attempt to establish the "innocence" of a petitioner, but DNA evidence plays no role in Petitioner's case and Petitioner's reference to these cases is irrelevant to this case which primarily involves alleged "recantations" of the trial testimony of certain witnesses. In fact, Georgia has enacted a separate and distinct statutory post-conviction DNA statute which was not at issue in the instant case. *See Crawford v. State*, 278 Ga. 95, 96 (2004), holding that, "The newly-adopted DNA testing statute requires a trial court to conduct a hearing only if a defendant's motion 'complies with the requirements of paragraphs (3) and (4)' of the statute. *O.C.G.A. § 5-5-41 (c)(6)(A).*"

as the shooter. In fact, as shown by the content of defense counsel's closing argument at trial, Petitioner made such a challenge the centerpiece of his trial defense.

The instant petition for certiorari is not an appropriate vehicle in which to review Petitioner's latest challenge to the eyewitness testimony presented at his trial, which has been reviewed on numerous occasions by state and federal courts, as this Court does not grant certiorari to "review specific facts." *See United States v. Johnson*, 268 U.S. 220, 227 (1925) and *Texas v. Mead*, 465 U.S. 1041 (1984).

This Court should deny this petition for certiorari as this case is not a proper vehicle for a relitigation of Petitioner's Eighth Amendment "innocence" claim.

III. PETITIONER'S NEWLY-CRAFTED EFFORT TO ELEVATE AN EXTRAORDINARY MOTION FOR NEW TRIAL PROCEEDING TO A PROCEEDING CREATING A LIBERTY INTEREST "REQUIRING" A HEARING, PRESENTS NO LEGITIMATE BASIS FOR THIS COURT'S EXERCISE OF ITS CERTIORARI JURISDICTION.

Petitioner alleges that this Court should grant certiorari "to consider if the State-created liberty interest in a new trial . . . invokes the protections of procedural due process when a defendant in a capital case presents substantial new admissible evidence of innocence." (Petition, p. 3). This contention is based

on several unproven premises, namely, Petitioner's unfounded assertion that there exists a "State created liberty interest in a new trial," that he has presented "substantial new admissible evidence of innocence" so as to implicate Eighth Amendment concerns and that this newly-crafted "liberty interest" claim was raised and considered as a federal question in the Court below.

Petitioner has availed himself of due process protections throughout his state and federal habeas corpus proceedings, and appears to "create" the "liberty interest" theory, to avoid the roadblocks which he would have to surmount to file successive state and federal petitions in an attempt to relitigate his "Eighth Amendment innocence claim."

As already noted, Petitioner's assertion in the Georgia Supreme Court was that the trial court should have granted him a hearing under state law governing extraordinary motions for new trial, not that state procedures had created a liberty interest that implicated due process concerns. Therefore, this Court should decline to review a federal law "liberty interest" claim not raised and considered in the court below. This Court has stated in such cases as *Kentucky v. Stincer*, 482 U.S. 730, 747 (1987), citing *Heckler v. Campbell*, 461 U.S. 458, 468-469, n.12 (1983), that it will not consider grounds which were not presented to court below, except "in exceptional cases." The state court's interpretation of state case law does not constitute such an exceptional case.

Additionally, assuming arguendo that Petitioner's "liberty interest" claim is viable in this procedural context, the Georgia Supreme Court made clear that it was not reaching any ultimate due process questions in this case, nor making "categorical" pronouncements about recanted testimony or the necessity for conducting hearings, but was merely holding that, in this case, "dealing with the evidence and in its decision not to hold a hearing, the trial court did not abuse its discretion with which it is empowered under the facts of this case." *Davis v. State*, 283 Ga. 438, 439 n.2 (2008). Therefore, because the Georgia Supreme Court did not reach or apply broad federal due process principles, but rather merely applied state law to the facts of Petitioner's case, certiorari should be denied.

The fact that the relief sought by Petitioner in this petition for certiorari also demonstrates that there is no federal question in this case warranting this Court's review. Petitioner merely seeks a remand for an evidentiary hearing under state law principles, rather than seeking to have Georgia's extraordinary motion for new trial procedure declared unconstitutional. Therefore, Petitioner's "liberty interest" contention is merely "academic" in the context of this case and does not warrant the grant of certiorari. *See Rice v. Sioux City Cemetery*, 349 U.S. 70, 74 (1955) ("The legal problem must be "beyond the academic or the episodic.").

CONCLUSION

WHEREFORE, for all the above and foregoing reasons, Respondent prays that this Court decline to exercise its certiorari jurisdiction and deny the instant petition for a writ of certiorari.

Respectfully submitted,

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RESPONDENT'S APPENDIX 1

RESPONDENT'S CHART LISTING EXHIBITS OFFERED BY PETITIONER DURING EXTRAORDINARY MOTION FOR NEW TRIAL

APPENDIX	INDIVIDUAL	DATE GIVEN	STATEMENT OR AFFIDAVIT FIRST PRESENTED IN
Appendix A	Isaiah Middleton (juror)	dated July 3, 2007	extraordinary motion for new trial (2007)
Appendix 1	Gary Hargrove	dated Aug 17, 2001	federal habeas corpus court (2003)
Appendix 2	Joseph Washington	dated Dec 5, 1996	federal habeas corpus court (2003)
Appendix 3	Harriet Murray	dated Oct 10, 2002	federal habeas corpus court (2003)
Appendix 5	Anthony Hargrove	dated Aug 8, 2001	federal habeas corpus court (2003)
Appendix 6	Shirley Riley	dated Aug 18, 2001	federal habeas corpus court (2003)
Appendix 7	Darold Taylor	dated Aug 20, 2001	federal habeas corpus court (2003)
Appendix 8	Tonya Johnson	dated Dec 6, 1996	federal habeas corpus court (2003)
Appendix 9	Anita Dunham Saddler	dated July 10, 2002	federal habeas corpus court (2003)
Appendix 10	April Hester Hutchinson	dated July 9, 2002	federal habeas corpus court (2003)
Appendix 11	Peggy Grant	dated July 11, 2002	federal habeas corpus court (2003)
Appendix 12	Daniel Kinsman	dated Oct 17, 2002	federal habeas corpus court (2003)
Appendix 13	Kevin McQueen	dated Dec 5, 1996	state habeas corpus court (1996)
Appendix 14	Jeffrey Sapp	dated Feb 9, 2003	federal habeas corpus court (2003)
Appendix 15	Monty Holmes	dated Aug 17, 2001	federal habeas corpus court (2003)
Appendix 16	D.D. Collins	dated July 11, 2002	federal habeas corpus court (2003)
Appendix 17	Larry Young	dated Oct 11, 2002	federal habeas corpus court (2003)
Appendix 18	Dorothy Ferrell	dated Nov 29, 2000	federal habeas corpus court (2003)
Appendix 20	Antoine Williams	dated Oct 12, 2002	federal habeas corpus court (2003)
Appendix 21	Stephen Lloyd Sanders	given Aug 18, 1989	federal habeas corpus court (2003)
Appendix 22	April Hester	dated Nov 30, 1995	state habeas corpus court (1996)
Appendix 23	Abdus Karim	dated Oct 8, 2002	federal habeas corpus court (2003)
Appendix 24	Robert Grizzard	dated March 23, 2003 given August 19, 1989	federal habeas corpus court (2003)
Appendix 25	Benjamin Gordon	dated Feb 10, 2003	federal habeas corpus court (2003)
Appendix 26	Michael Cooper	dated Feb 10, 2003	federal habeas corpus court (2003)
Appendix 27	April Hester	dated Aug 19, 1989	federal habeas corpus court (2003)
Appendix 28	Joseph Blige	dated Dec 1, 1995	state habeas corpus court (1996)
Appendix 29	Lamar Brown	dated Nov 2, 1995	state habeas corpus court (1996)
Appendix 30	Jeffrey Neuschatz	dated July 6, 2007	extraordinary motion for new trial (2007)
Appendix 31	Kelly Fite	dated April 18, 2003	federal habeas corpus court (2003)
Appendix 32	Curtis Wilson (juror)	dated July 6, 2007	extraordinary motion for new trial (2007)
Appendix 33	Cynthia Quarterman (juror)	dated July 12, 2007	extraordinary motion for new trial (2007)
Appendix 34	Brenda Forrest (juror)	dated July 13, 2007	extraordinary motion for new trial (2007)